

**COMPLAINT INVESTIGATION SUMMARY**

COMPLAINT NUMBER:	2059.04
COMPLAINT INVESTIGATOR:	Jennifer Campbell
DATE OF COMPLAINT:	September 23, 2003
DATE OF REPORT:	October 22, 2003
REQUEST FOR RECONSIDERATION:	no
DATE OF CLOSURE:	December 10, 2003

**COMPLAINT ISSUES:**

Whether the North Montgomery Community School Corporation and the West Central Indiana Special Services Cooperative violated:

511 IAC 7-23-3 by failing to maintain and implement procedures to protect the confidentiality of personally identifiable information.

**FINDINGS OF FACT:**

1. The Student is seventeen years old, attends the local high school (the "School"), and is eligible for special education and related services as a student with a hearing impairment.
2. The Complainant submitted a page from the School yearbook. The page is titled "Special Services" and displays four photographs. One of the photographs is of the Student. Next to the Student's photograph is a caption which states that he is in a special service class.
3. The Parent did not give written consent for the School to identify the Student in the yearbook as a student receiving special services.

**CONCLUSIONS:**

1. Findings of Fact #2 and #3 indicate that the School failed to protect the confidentiality of personally identifiable information of the Student. The School yearbook page titled "Special Services", displays a photograph of the Student discloses personally identifiable information. Therefore, a violation of 511 IAC 7-23-3 is found.

**DISCUSSION**

The confidentiality requirements of 511 IAC 7-23 are based principally upon the Family Educational Rights and Privacy Act (FERPA), 20 U.S.C. § 1232g, 34 C.F.R. Part 99, as incorporated into the Individuals with Disabilities Education Act through 20 U.S.C. § 1417(c). Federal agency constructions have assisted in the understanding of these requirements. Federal and state confidentiality requirements prohibit the unauthorized disclosure of "personally identifiable information" regarding a student. "Personally identifiable information" includes "disability designation" as well as information that would make it possible to identify a student's disability with reasonable certainty. 511 IAC 7-17-58. "Disclosure" is defined, in relevant part, as a "communication of personally identifiable information," including by "written...means." 511 IAC 7-17-26. The

Family Policy Compliance Office, charged by Congress with the implementation and enforcement of FERPA, see 20 U.S.C. § 1232g(f), 34 C.F.R. § § 99.60-99.67, has long held that information indicating a student is receiving special education services is “personally identifiable information” that is subject to adherence to FERPA’s disclosure requirements. See, for example, Letter of Finding to Henry County (KY) Public Schools (FPCO 1999), which can be read and downloaded at <http://www.ed.gov/policy/gen/guid/fpc/ferpa/library/henrycoky.html>. In this instance, it is not the inclusion of the photograph of the student in the yearbook that is not in concert with 511 IAC 7-23 and applicable federal law. It is the use of the title “Special Services” and the identification of students as being in a special service class that constitute the impermissible disclosure of personally identifiable information.

**The Department of Education, Division of Exceptional Learners requires the following corrective action based on the Findings of Fact and Conclusions listed above.**

**CORRECTIVE ACTION:**

The North Montgomery Community School Corporation and the West Central Indiana Special Services Cooperative shall:

1. Send a written memorandum to all appropriate faculty advisors of the yearbook in regard to the requirements of 511 IAC 7-23-3 in which the public agency shall establish, maintain, and implement procedures to protect the confidentiality of personally identifiable information. An assurance statement shall be signed by the faculty advisors which affirms that they have read and understand the requirements of 511 IAC 7-23-3. A copy of the memorandum and the signed assurance statement shall be forwarded to the Division no later than November 17, 2003.
2. Send an assurance statement signed by the Principal which affirms that he has read and understands the requirements of 511 7-23-3. A copy of the memorandum and the signed assurance statement shall be forwarded to the Division no later than November 17, 2003.